

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Unlicensed  
Residential Building Contractor Activity  
of Bryan Northway, individually and  
d/b/a Northways Roofing and  
Remodeling, a/k/a BRY's Handyman

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION**

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Barbara L. Neilson on July 31, 2003, at 3:30 p.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Jennifer S. Kenney, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101-2127, appeared on behalf of the Department of Commerce ("the Department"). There was no appearance by or on behalf of the Respondent, Bryan Northway, whose last known address is 20285 Edgeton Court, Richmond, MN 56368. The record closed on August 5, 2003, upon receipt of a letter from counsel for the Department requesting that the Administrative Law Judge recommend that the Respondent be found in default.

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the office of the Commissioner of Commerce, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

## STATEMENT OF ISSUES

The issues presented in this case are whether the Respondent, Bryan Northway, individually and d/b/a Northways Roofing and Remodeling, a/k/a BRY's Handyman engaged in unlicensed activity without a valid building contractor's license and in violation of a prior cease and desist order, performed negligently or in breach of contract, acted in an incompetent, untrustworthy or financially irresponsible manner, and failed to respond to the Department's requests for information in violation of Minn. Stat. §§ 45.027, subd. 1a, 326.84, subds. 1 and 1b, and 326.91, subd. 1(4), (5), and (6); and, if so, whether the Respondent should be censured or civil penalties should be imposed against Respondent pursuant to Minn. Stat. §§ 45.027, subds. 6 - 7, and 326.91, subd. 1.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. The Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges initiating this contested case proceeding was served on the Respondent, Bryan Northway, individually and d/b/a Northways Roofing and Remodeling, a/k/a BRY's Handyman, via first class mail on June 23, 2003, at the following address: Bryan Northway, d/b/a Northways Roofing & Remodeling, a/k/a BRY's Handyman, 20285 Edgeton Court, Richmond, MN 56368.<sup>[1]</sup>

2. After the envelope containing the Notice sent to the Respondent was returned to counsel for the Department, a Notice of Service of Process and a copy of the Notice of and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges was sent via certified mail to the Respondent at the same address in Richmond, Minnesota, his last known address. A copy of the Notice of and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges was also served on the Office of the Commissioner of Commerce by certified mail on July 8, 2003, pursuant to Minn. Stat. § 45.028.<sup>[2]</sup>

3. The Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges contained the following language in bold type:

If Respondent fails to attend or otherwise appear at any prehearing conference, settlement conference, or hearing in this matter without the prior consent of the judge, or fails to comply with any interlocutory order of the judge after having been served with a copy of this Order, Respondent shall be deemed in default and the allegations or issues set forth herein may be deemed proved, and Respondent may be censured and/or a civil penalty may be imposed against Respondent without further proceedings.<sup>[3]</sup>

4. The Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges scheduled the prehearing conference for July 31, 2003.<sup>[4]</sup>

5. The Respondent did not file any Notice of Appearance with the Administrative Law Judge or make any request prior to the prehearing conference for a continuance or

any other relief. The Respondent did not personally appear at the prehearing conference in this matter scheduled for July 31, 2003, or have an appearance made on his behalf.

6. Because the Respondent failed to appear at the hearing in this matter, he is in default.

7. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 326.91.

2. The Notice of and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges issued by the Department was proper and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Respondent, having made no appearance at the hearing, and not requesting any continuance or relief, is in default. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges are hereby taken as true.

4. By engaging in unlicensed activity without a valid building contractor's license and in violation of a prior cease and desist order, performing negligently or in breach of contract, acting in an incompetent, untrustworthy or financially irresponsible manner, and failing to respond to the Department's requests for information, the Respondent has violated Minn. Stat. §§ 45.027, subd. 1a, 326.84, subds. 1 and 1b, and 326.91, subd. 1(4), (5), and (6). The Respondent is subject to censure and/or civil penalties pursuant to Minn. Stat. §§ 45.027, subds. 6 - 7, and 326.91, subd. 1, and the imposition of sanctions is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the Commissioner of Commerce censure and/or impose an appropriate civil penalty against the Respondent Bryan Northway, individually and d/b/a Northways Roofing and Remodeling, a/k/a BRY's Handyman.

Dated: August 7, 2003

/s/ Barbara L. Neilson  
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BARBARA L. NEILSON  
Administrative Law Judge

### **NOTICE**

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

Reported: Default.

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<sup>[1]</sup> Affidavit of Service by First Class Mail of Jean-Anne Gates attached to Notice of and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges.

<sup>[2]</sup> Affidavit of Compliance filed by counsel for the Department on July 10, 2003.

<sup>[3]</sup> Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges, p. 5.

<sup>[4]</sup> *Id.*, p. 1.